

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7091 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ACQUIGUARD PLASTICS & POLYMERS PVT LTD

Versus

UNION OF INDIA

Appearance:

MR PARESH M DAVE for Petitioners
MR MUKESH R SHAH for Respondents.

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.K.RATHOD

Date of decision: 20/09/1999

ORAL JUDGEMENT

Rule, service of which is waived by learned advocate Mr M.R.Shah appearing on behalf of the respondents. In the peculiar facts and special circumstances and upon joint request, this petition is taken up for final hearing today itself.

It is noticed that the main grievance of the petitioner Company is against the non-action in non-hearing the stay application pending the appeal by the Appellate Authority and at the same time taking coercive action for the recovery of central excise dues. Admittedly, stay application is not decided and the petitioner had frequently requested for early hearing and remained present through its authorised person. Be that as it may, in the light of the facts of the case and the decision of this Court in D.C.W. v. Commissioner of Appeals, reported in 1997(2) GLR 913, the stay application is required to be expeditiously heard as coercive recovery proceedings have also simultaneously started by the respondent authorities. Therefore, in our opinion, in the light of the facts and the aforesaid decision, the appellate Tribunal is directed to decide the stay application pending appeal of the petitioner as expeditiously as possible and preferably within a period of six weeks from today. Until the stay application is decided, no coercive recovery shall be initiated against the petitioner.

Learned advocate Mr Dave appearing for the petitioner has, seriously, criticised the approach of the respondent authority in employing coercive recovery proceedings even when the stay application pending appeal was yet not heard and that this Court in many such cases, has stayed the coercive measures until the stay application is decided. It was, therefore, stated that the petitioner would like to move the appropriate authority for release of the goods attached on payment of duties. In view of the peculiar facts and the fact that the goods are required to be used for irrigation and allied programmes in drought affected areas, the authority concerned shall decide such application within a period of one week from the date of receipt of the application.

In the result, the petition is accordingly allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

Office is directed to transmit the writ forthwith to the concerned appellate Tribunal.

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(vjn)